

D.P.U. 91-234-H

Petition of Commonwealth Electric Company and Cambridge Electric Light Company, pursuant to M.G.L. c. 164, §§ 69I, 76, 94, and 220 C.M.R. §§ 10.00 et seq., for review of the procedures by which additional energy resources are planned, solicited, and procured by Commonwealth Electric Company and Cambridge Electric Light Company.

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I. INTRODUCTION

On June 3, 1994, Commonwealth Electric Company ("Commonwealth") and Cambridge Electric Light Company ("Cambridge") (together, "Companies") submitted their integrated resource management ("IRM") Phase IV filing to the Department of Public Utilities ("Department") for review, and on June 21, 1994, submitted a supplement to their Phase IV filing. On June 29, 1994, the Companies submitted additional contracts with project developers for Department review. On June 30, 1994, the Department issued its Order in review of the Companies' Phase IV filing. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-C (1994) ("D.P.U.91-234-C").¹ On July 29, 1994, the Department issued an Order approving contracts submitted on June 29, 1994. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-D (1994). On August 24, 1994, the Companies submitted additional contracts with project developers, and on September 23, 1994, the Department issued an Order approving these contracts. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-F (1994) ("D.P.U. 91-234-F"). On October 5, 1994, the Companies submitted an additional contract, and in this Order the Department reviews this contract. In addition, on September 28, 1994, the Companies submitted a Motion for Clarification of the Department's Order in D.P.U. 91-234-F.

II. PHASE IV REVIEW

Pursuant to 220 C.M.R. § 10.06(3), the Department reviews final contracts reached between electric companies and award group project developers, and either approves or

¹ Review of contracts submitted on June 29, 1994 was not included in D.P.U. 91-234-C.

disapproves such contracts. In D.P.U. 91-234-B, the Department approved an award group that, for Commonwealth, included retrofit programs by Citizens Conservation Corporation ("Citizens") and Conservation Services Group ("CSG") in the residential non-heat sector; Syracuse Energy Services Company, Inc. ("SYRESCO") and CSG in the residential heat sector; Northeast Energy Services, Inc. ("NORESCO") and DMC Services, Inc. in the small general-use sector; and NORESCO, Achushnet Company, Titleist & Foot-Joy, Aerovox, Inc., EUA Cogenex Corporation, and HEC, Inc. in the medium/large general-use sector.²

For Cambridge, the Department approved an award group that included retrofit programs by Citizens and SESCO, Inc. in the residential non-heat sector; Citizens and SESCO, Inc. in the residential heat sector; DMC Services, Inc. in the small general-use sector; and NORESCO, Esplanade Condominiums, EUA Cogenex Corporation, Proven Alternatives, Inc., Kenetech Energy Management, Inc., and HEC, Inc. in the medium/large general-use sector.³

On August 3, 1994, the Companies supplemented their Phase IV filing ("August 3, 1994 Supplemental Filing") in response to the withdrawal of proposals from the award group approved by the Department in Phase III of the Companies' IRM proceeding.

Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-B

² In addition, the award group included new construction programs offered by Commonwealth in all sectors.

³ In addition, the award group included new construction programs offered by Cambridge in all sectors.

(1994).⁴ On September 27, 1994, the Department issued an Order on the August 3, 1994 and September 2, 1994 requests by the Companies to modify the Department-approved award group. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-G (1994) ("D.P.U. 91-234-G").

The IRM regulations provide that an electric company shall negotiate contracts with project developers, and that final contracts shall be filed with the Department for approval during Phase IV. 220 C.M.R. § 10.06(2). The IRM regulations further provide that an electric company and project developers may agree to the terms and conditions of the long-run standard contract approved by the Department, and that the electric company shall indicate how the final contract varies from the long-run standard contract.⁵ Id. The IRM regulations require the Department to review final contracts between an electric company and project developers to determine whether they comply with the IRM regulations, and are in the public interest. Id.

On October 5, 1994, the Companies submitted a contract between Cambridge and CES/Way International, Inc.⁶ With the final contract, the Companies submitted a summary of how the contract differs from the long-run standard contract. After review of its terms

⁴ On September 2, 1994, the Companies submitted a plan for the replacement of a project developer with whom the Companies had terminated contract negotiations in Commonwealth's residential heat sector ("September 2, 1994 Supplemental Filing").

⁵ The Companies' long-run standard contracts were reviewed and approved by the Department in Phase I of this proceeding. Commonwealth Electric Company and Cambridge Electric Light Company, D.P.U. 91-234-A (1993).

⁶ A CES/Way International, Inc. proposal was approved by the Department as a replacement resource in the approved award group. D.P.U. 91-234-G at 5-6.

and analysis of its conformity to the approved standard contract, the Department finds that the contract is consistent with the IRM regulations and is in the public interest. Accordingly, the Department approves the contract.

V. MOTION FOR CLARIFICATION

On September 23, 1994, the Department issued an Order approving contracts submitted for Department review on August 24, 1994.⁷ See D.P.U. 91-234-F. The Department's Order in D.P.U. 91-234-F found that the contracts were consistent with the IRM regulations and in the public interest. Accordingly, the Department approved the contracts. D.P.U. 91-234-F at 3. On September 28, 1994, the Companies submitted a Motion for Clarification of the Department's Order in D.P.U. 91-234-F ("September 28, 1994 Motion"). In their September 28, 1994 Motion, the Companies stated that the text of the Department's Order in D.P.U. 91-234-F accurately described the contracts submitted for review (September 28, 1994 Motion at 1-2). However, the Companies stated that the Order Section of the Department's Order incorrectly indicated approval of a contract between Commonwealth and SESCO for Commonwealth's residential non-electric heat sector (id.). The Companies stated that, to be consistent with the text of the Order and the contract submitted for approval, the Department's Order should have indicated approval of a contract between Commonwealth and Citizens (id.).

⁷ On August 24, 1994, the Companies submitted contracts between Commonwealth and Citizens Conservation Corporation ("Citizens") (residential non-heat), Cambridge and SESCO, Inc. ("SESCO") (residential heat), Cambridge and SESCO (residential non-heat), Cambridge and Citizens (residential heat), and Cambridge and Citizens (residential non-heat).

The Department has stated that a motion for clarification may be granted when the Order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Whitinsville Water Company, D.P.U. 89-67-A (1989). See also Berkshire Gas Company, D.P.U. 92-210-B (1993). The Department's Order in D.P.U. 91-234-F incorrectly indicated approval of a contract between Commonwealth and SESCO for Commonwealth's residential non-electric heat sector, and should have approved the contract between Commonwealth and Citizens. Accordingly, the Companies' September 28, 1994 Motion is granted, and the contract between Commonwealth and Citizens is approved.

VI. ORDER

After due consideration, it is

ORDERED: That the contract between Cambridge Electric Light Company and CES/Way International, Inc. is approved; and it is

FURTHER ORDERED: That the Companies' September 28, 1994 Motion for Clarification is granted, and the contract between Commonwealth and Citizens is approved.

By Order of the Department,

Kenneth Gordon, Chairman

Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).